

REMARKS

Please reconsider the claims in the application in view of the remarks below. Claims 1-32 remain pending in the present application.

Claim Objection

The Office Action objected to claims 5-11 because those claims did not immediately follow the dependent claim, from which they in turn depend. While applicant notes the objection, the numbering as originally claimed will be maintained since applicant cannot renumber the claims at this stage of the proceedings.

Claim Rejection – 35 U.S.C. §112, second paragraph

The Office Action rejected claims 1, 14, 23, 25, 31 under 35 U.S.C. §112, second paragraph for lack of antecedent basis. Claims 1, 14 and 25 are being amended to recite “integrity value” in the singular form to provide antecedence. With respect to claims 23 and 31, applicant traverses the rejection. The Office Action alleges that, “a checksum was never defined as part of a data blocks data structure in the tree.” Contrarily, the specification in paragraphs [0017-0018] describes checksums. Accordingly, the rejection of claims 23 and 31 under section 112 is not proper.

Claim Rejection – 35 U.S.C. §102(e)

The Office Action rejected claims 1, 2, 12, 14, 15, 18-26, 28-32 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. Publication No. 2003/0200448 (“Foster I”). The Office Action also rejected claims 1-3, 12, 14-16, 25-27 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,715,085 (“Foster II”). In this reply, independent claims 1, 14 and 25 to further clarify what is being claimed. Applicant submits the neither Foster

I nor Foster II discloses or suggests every element claims in amended claims 1, 14 and 25. For example, Foster I and Foster II do not disclose or suggest “a network-attached storage device.” For at least that reason, applicant believes independent claims 1, 14 and 25 and their respective dependent claims are not anticipated by Foster I or Foster II.

Claim Rejection – 35 U.S.C. §103(a)

The Office Action rejected claims 4 and 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. Publication No. 2003/0200448 (“Foster I”) in view of U.S. Patent No. 5,608,801 (“Aiello”). The Office Action also rejected claims 4 and 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,715,085 (“Foster II”) in view of U.S. Patent No. 5,608,801 (“Aiello”). Claim 13 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. Publication No. 2003/0200448 (“Foster I”) in view of U.S. Patent No. 6,898,707 (“Sit”). The Office Action also rejected claim 13 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,715,085 (“Foster II”) in view of U.S. Patent No. 6,898,707 (“Sit”). Applicant respectfully traverses the rejection.


In rejecting claims 4 and 17 under section 103(a), the Office Action cites Foster I as the primary reference. Similarly, the Office Action cites Foster II as a primary reference in rejecting claim 13. Without conceding to the propriety of the Office Action’s arguments on the merits over Foster I and Foster II, applicant believes that Foster I and Foster II are not proper references at least by virtue of 35 U.S.C. §103(c)(1). That section “disqualifies as prior art subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) if that subject matter and the claimed invention ‘were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.’” See MPEP 706.02(l)(1) I. Foster I

and Foster II have the same filing date of April 18, 2002, and their publication date is October 23, 2003. The filing date of the present application is August 13, 2003. Accordingly, the Office Action applies Foster I and Foster II under 103(a) via 102(e). Foster I, Foster II and the present application are assigned to International Business Machines Corporation, Armonk, NY. The provision of 35 U.S.C. §103(c)(1) is effective to all applications pending on or after December 10, 2004, including applications filed prior to November 29, 1999. Therefore, under 35 U.S.C. §103(c)(1), Foster I and Foster II are not prior art.

Since Foster I and Foster II do not qualify as prior art and because Aiello and Sit fail to disclose or suggest every element claimed in claims 4, 17, and 13, those claims are not obvious.

In view of the foregoing, this application is now believed to be in condition for allowance, and a Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference might expedite prosecution of this case, applicant respectfully requests that the Examiner call applicant's attorney at (516) 742-4343.

Respectfully submitted,


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